

COAL SURFACE MINING RECLAMATION FUND ADVISORY BOARD

October 3, 2002

A meeting of the Coal Surface Mining Reclamation Fund Advisory Board was held on October 3, 2002 at 10:00 a.m. at the Department of Mines, Minerals and Energy Office in Big Stone Gap.

Present

Charlie Baker
Paul Ison
Roger Williams

Absent

Fred Dotson
Marvin Gilliam

Also Present

Ann McDavid
Sandy Smith
Les Vincent
Benny Wampler

Chairman Paul Ison called the meeting to order. Board members reviewed minutes of the last meeting on May 16, 2001. Mr. Ison called for a motion to approve the minutes as written. The minutes were unanimously approved.

Review of Current Pool Bond Fund Financial Report

Roger Williams discussed the Financial Status Report for the fourth quarter ending June 30, 2002. Total revenue for the quarter was \$106,895.28. This total included \$69,727.79 interest earned; \$31,167.49 in reclamation taxes; and \$6,000.00 in entrance fees. Disbursements for the quarter were \$1,220.80. The fund balance is a record high of \$5,104,946.93. This is an increase of \$380,087.73 from the period ending June 30, 2001.

Mr. Williams reported tonnage production had decreased from 2,066,377.35 tons in the first quarter ending September 30, 2001 to 865,953.16 tons in the fourth quarter ending June 30, 2002. The monthly income averages ranged from approximately \$20,000 to \$40,000.

Review of Current Pool Bond Fund Liabilities

Ann McDavid reported there is one forfeited pool bond permit, Swords Creek Leasing, Inc., PN 1101627. The site is being reclaimed at the present time. \$132,000 in bond money was forfeited and collected. Approximately \$42,000 of forfeiture money has been spent, which includes \$25,000 for an engineering design and a road maintenance contract. The pool bond liability for this permit is estimated to be approximately \$500,000, which is the cost of the reclamation that will be paid using pool bond funds. The contract for this project was awarded to Robert Clear Coal Corporation for approximately \$600,000. Reclamation is expected to be completed by the spring of 2003.

Benny Wampler asked if there were any other pending or potential bond forfeitures. Ms. McDavid stated there are none at the present time. There was a brief discussion of permits in temporary cessation. There are currently 44 permits in temporary cessation.

Discussion of the Status of Changes to Regulations Covering Bond Release for Pool Bond Participants

Roger Williams referenced the last meeting of the Board when the decision was made to initiate rulemaking on phased bond release. A Regulatory Work Group prepared the language for the proposed regulation change. Mr. Williams asked Les Vincent for an update concerning the work done by the Regulatory Work Group on this issue.

Mr. Vincent reported that the Regulatory Work Group developed proposed language that basically stated the bond release application, the procedural requirements, and released amount shall be consistent with the release criteria under VAC 25-130-800.40 for non-pool bond participants. The proposal was submitted to the Office of Surface Mining (OSM) for informal review. Mr. Vincent stated there is no federal counterpart for the pool bond fund, and as long as the fund remains solvent, he believes OSM will concur with the proposal.

As part of rulemaking, a concurrence letter is needed from the Office of the Attorney General (AG) stating the agency has the legal authority to promulgate the rule. It was determined the proposed changes cannot be endorsed as currently worded. There is not a problem with the phase release on the pool bond. It is the referenced regulation VAC 25-130-800.40 that the Assistant Attorney General has an issue with regarding the minimum amount of bond that is retained after Phase I and Phase II bond releases. The language of the proposed regulation will have to be changed to avoid referencing the regulation VAC 25-130-800.40, and basically build in the phased release components. The referenced regulation states that after Phase I, and the grading is completed, 60% of the bond could be released. The Statute states that in no event shall total bond be less than \$100,000. If 60% is released after Phase I, that leaves a balance of \$40,000. The members and other feedback from industry indicate the minimum bond is not a problem.

The difficulty of obtaining surety bonds was discussed - getting bonding is almost at a national crisis. Some of the issues creating bonding problems are due to the uncertainty created with recent Federal court decisions; OSM's discussion about potentially perpetual liability for acid mine drainage; and being unable to define potential liability.

A meeting will be scheduled as soon as possible with the Regulatory Work Group to rewrite the language for the proposed rulemaking. A Reclamation Fund Board meeting will be scheduled following the Work Group meeting. Mr. Vincent stated it could take up to six months for submission and approval.

Roger Williams distributed the latest edition of the Freedom of Information Act per a Directive from the Governor.

There being no further discussions, the meeting was adjourned.